Supreme Court, U.S.
FILED

No: 95 661 OCT 2 3 1995

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term 1995

LARRY G. McFARLAND,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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25 pp

QUESTIONS PRESENTED

(1) Whether an individual, who is [such as the Petitioner in this employment case, who is irreparably harmed as a result of Respondent, a County Government, and its workplace alleged its terminated Petitioner as paranoid with fixed delusional disorders, no insight, a major speech defect and being permanently legally unfit by social security disability standards to work anywhere], the subject of false and malicious claims of total incompetence has been given fundamental due process and a fair hearing on Petitioner charges of employment discrimination, where a prior state court confirmed final and binding labor arbitration decision and transcripts show a ring of fraud, factual proof of forgery and that Respondent has not rescinded, not denied nor has it mooted its ongoing discriminatory actions against Petitioner either before or after the United States District Court granted a summary judgment favoring Respondent nullifying the collective bargaining process and contradicting and canceling the essence of the final and binding labor arbitration award?

(2) Whether the United States Supreme Court will grant a preclusive effect to the arbitrator decisions [A 3-13] and to the litigator's arguments supporting the arbitrator's decision [A 105-140] 28 U.S.C. 1738?

(3) Are Petitioners claims time barred?

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OPINIONS BELOW

The panel and en banc opinions of the court of infra [A 1-2] are unpublished. The opinion of the district court infra [A-25-30].

JURISDICTION

The judgment of the Court of Appeals upon a rehearing en banc was denied July 27, 1995 [A-41]. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Age Discrimination and Employment Act of 1967, as amended 29 U.S.C. 623 et seq. and Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 1981.

STATEMENT OF THE CASE

This is not a very complicated case.

1. The facts are largely undisputed [A-92]. This case is about the right to protect one's own personal safety, to be free of disparate treatment where an employer, knowingly, unfairly agrees to subject an employee to arbitrary unreasonable and capricious violence in the workplace [A-4, 82-85].

2. Petitioner informed Respondent of his health and safety concerns following the assault [A-44] [A-5] in the workplace.

3. Respondent acknowledge Petitioner's complaint by doing nothing [A-44].

4. Other persons in the workplace also complained [A-43].

5. The erratic, violent and aggressive behavior was known throughout the workplace [A-4]

6. Whole host of witnesses testified regarding the aggressor's unpredictable and erratic behavior in the workplace [A-85]

7. In addition to those witnesses the aggressor and perpetrator of violence in the workplace had informed management [A-42] of his inability to peacefully control and manage his behavior.

8. Article 19 of the Collective Bargaining Agreement required Respondent to make a genuine and good faith effort to reasonably protect the health and safety of its employees.

9. Respondent was provided with all the knowledge and awareness of the dangerous behavior in the workplace. [A-4].

10. The aggressor had expressed in writing his intent [A-42] and likelihood of committing violence as early as 3/14/89 [A-42].

11. Despite that knowledge the aggressor was now provided a medical excuse for his inappropriate and violent behavior [A-4].

12. Respondent's denial of the violence and its failure to make a good faith effort to address the violence precipitated Petitioner and not the aggressor being forced to have questionable [A-6] psychiatric examinations [A-4-7].

13. Petitioner's job was largely unsupervised and his performance rating were always satisfactory or better [A-4].

14. The Respondent attempted to blame the petitioner for the violence in the workplace also failed. [A-62].

15. The real purpose of these psychiatric visit were made and intended to lead to the termination of the Petitioners employment. The following appendixes falsely alleged that the Petitioner was unable to work [A-60, 64-65] on April 8, 1991 Respondent issued a letter stating that Petitioner was disabled and unfit to work as of "January 25, 1991" the date of the assault. [A-60].

16. The false allegations of paranoid, delusional disorders were concocted as psychological grounds to argue that Petitioner had not been assaulted. The Respondent

strategy was to suggest Petitioner had an permanent and insane fear of the workplace. There was no truthful testimony to support or corroborate these unfounded allegations [A-83-84].

17. On April 12,1991 [A-64] letter expressing intent to terminate Petitioner states as its grounds that Petitioner is paranoid [A-64].

18. The facts surrounding this matter would eventually lead to final and binding labor arbitration [A-110].

19. The County noted in its letter of intent to dismiss [A-64] and its actual termination was scheduled for the close of business on April 19, 1991 [A-35].

20. Following Petitioner's termination as provided, facts continued to unfold. The Union's agent suggested certain events had taken place which had not occurred [A-47], specifically, no psychological visits had occurred before March 4, 1991 meeting [A-47]. On [A-35] item 13, Petitioner filed a Union grievance April 15, 1991. The reason Respondent requested Petitioner come to the March 4, 1991 meeting was that Respondent knew the reason for Petitioner's absence from work. [A-44].

21. On May 21, 1991 [A-76] it is noted that the Union postponed the filing of the grievance until April 23, 1991 which deprived the Petitioner the 5 day grace period and the 7 day grace period to obtain a hearing prior to dismissal. The May 21 letter also notes that no action was being taken to deal with Petitioner's grievance [A-76].

22. On June 3, 1991 [A-77-78] management responded by stating that none of Petitioner's rights had been violated [A-61].

23. The April 11, 1991 letter [A-61-63] sums up much of the Respondent's actions: (a) It falsely stated that Petitioner was not engaged in work related activity at the time of the unprovoked assault, (b) Petitioner was no longer fit for duty and (c) that the medical information was strictly confidential.

24. There was no action taken on the union grievance until after the criminal conviction on February 3, 1992 of the aggressor noted in [A-7].

25. Ultimately, the Union and the Respondent County agreed to a memorandum of settlement [A 141-144].

26. On May 6, 1994 [A-145 - 146] the Circuit Court of Prince George's County was notified that the Respondent had settled the matter with prejudice and that McFarland was the beneficiary of that settlement. However, Mr. McFarland had not joined in that settlement [A-145].

27. This was not an all claims dispute settlement [A-146].

28. On May 26, 1991 Respondent's attorney advised Respondent that they would not settle matters not remedied in the collective bargaining agreement.

29. Petitioner informed the United States District Court of his desire to resolve the dispute involving Petitioner's unjust and unfair treatment [A-148].

In Kewanee Machinery Div. Chromalloy American Corp. v. International Brotherhood of Teamsters, etc.

(CA8 MO) 593 F2d 314, Arbitration award which resolved conflict between clauses of collective bargaining agreement, one of which provided that employees be discharged "for proper cause" while other purported to reserve to management "sole right" to discharge employees would not be vacated; arbitrator's holding that discharge for mere absence regardless of reason did not fulfill contractual "proper cause" requirement would be upheld despite provision for management's exclusive control over discharge policy because of broad grant of interpretive power to arbitrator and desirability of effectuating arbitration as means of resolving labor disputes.

ARGUMENT

REASONS FOR GRANTING THE PETITION

The Petitioner at this point acknowledged that "a good name is to be esteemed over great riches "Proverbs 22:1". Petitioner also acknowledges that a person's reputation follows him everywhere he goes open and shutting doors based on the perception of others. The Petitioner knows however, the Respondent actions in this case goes well beyond libel and slander.

A man is praised for his wisdom, a warped mind is despised. "Proverbs 12:8".

The respondents medical professional and lay agents joined together to wrongfully terminate Petitioner's employment, annihilate Petitioner's career all for fraudulent purposes. These concocted medical records are now being considered and treated as true. Thus, causing the Petitioner to be unjustifiably burden with a false medical history that is intended to permanently injure the Petitioner.

1. Petitioner reiterates the facts of this case as presented poses very little dispute or conflict. "...Because of the inherently factual nature of the inquiry, the plaintiff need produce very little evidence of discriminatory motive to raise a genuine issue of fact." Lindahl v. Air France, 930 F.2d 1434, 1438 (9th Cir. 1991).

2. Some matters are "malum se" and discriminatory "per se". It is clear throughout the record that Petitioner/employer claimed that the Petitioner has impaired mental capacity that substantially limits the Petitioner's performance of one or more of life's major functions.

3. There are important legal rights involved in this case. The Defendant knew at the time it dismissed Plaintiff with a substantial stigma its wrongful action had the capacity to injure. Respondent knew its actions taken against Petitioner were wrongful and qualified as "malum se" and malum prohibitum".

4. Plaintiff is entitled to fair and equal treatment and should be compensated for the malicious deprivation of liberty and injury to his reputation.

5. The Respondent agreed to have its actions against the Petitioner submitted to arbitration and State Court review to determine its legality. "The Supreme Court further found where the State proceedings met the due process standards so as to provoke the Statutory directives of 28 USC 1738." The State proceedings need no more than satisfy the minimum procedural requirements of the 14th amendment.

This is an ongoing case of discrimination. The Respondent, a County Government, fired Petitioner from its employment claiming Petitioner was/is totally, permanently incompetent and dysfunctional. The Petitioner filed a grievance. The grievance was ultimately submitted to final and binding labor arbitration pursuant to a collective bargaining agreement. The continuous and ongoing discrimination now result in part from conflicting interpretations of the final and binding labor arbitration award. For example, On May 9, 1994 [A-142 - 144] the Respondent agreed to fully accept the decision of the arbitrator.

The agreement executed between Union and Management, restored all of Petitioner's leave for the period covering between January 28, 1991 and April 21, 1991 [A-141 - 142].

The United States District Court opinion at [A-26] subtracts and deletes the arbitration award in a manner that denies Petitioner fundamental due process pursuant to Article 43 - Grievance Procedure. "The [A-9] arbitrator shall have the authority to make decisions only on issues presented to him, he shall have no authority to change, amend, add or detract from any of the provision of this agreement."

The United States District Court changed the terms of the arbitration award on [A-12] the Arbitrator states "There was no reasonable basis" for separating Petitioner from his employment based on an alleged medical or legal disability". The United States District Court alters the evidence by reading the arbitration award to state there was "no medical basis" for the Respondent County's decision to terminate the Petitioner.

The United States District Court asserts at [A-25] its opinion is based on the entire record [see A-148]. Within the arbitration award, however, is the fact that Respondent's wrongful termination of Petitioner is based on decisions of Respondent's [A-7] medical advisory board. On [A-7] foot note 2, references medical testimony. The Respondent alleges on facts provided by its Medical Board were used to terminate Petitioner's employment. The notice of dismissal letters sent to Petitioner all provide a medical basis for termination [A-45, 48, 58, 61, 62, 63] etc. The arbitration award goes on to state "Finally grievant (Petitioner) argues that Skinner wrongfully accepted the findings of the Medical Advisory Board in summary fashion than an independent on the basis of all relevant criteria."

The Petitioner maintains this was [A-11] was a pretext grounded on disability for not returning to work following the Gaynor incident. On [A-16] the Equal Employment Opportunity Commission review of the Medical Advisory Board meeting held during January 1, 1990 through December

31, 1991 revealed the white psychiatrist, who recommended the Petitioner not be returned to work based on medical condition... .

On July 2, 1993 Court proceeding read "Where any employee undergoes a medical examination and results therefore indicate employee totally disabled... that authority shall proceed to terminate. "There is no authority to employ someone who is not fit for duty" [A-108].

On [A-26] the United States District Court decided to change the Petitioner's disability from a mental handicap [A-58 - A-85] to an alleged "emotional handicap" [A-29]. The two objective psychological tests referenced at [A 66-75] rebut the suggestion of either a mental or an emotional handicap. See also [A-84] July 27, 1992 letter to attorney Joel Smith references the psychological test.

The United States District Courts states the Respondent's attempt to get Petitioner to return to work; compare this claim with letters written April 8, 1991 [A-60] stating that Petitioner was disabled and not fit for duty. Letter dated April 11, 1991 the Respondent concluded Petitioner was alleged not to be engaged in work related activity April 12, 1991 [A-64] Petitioner was notified he would be fired.

On [A-35] Petitioner filed a grievance April 15, 1991. On April 16, 1991 Petitioner [A-35] was forced to be examined by another of Respondent's psychiatrist. Note Petitioner was given 5 days for the [A-64] April 12, 1991 grievance to be filed.

The grievance filed [A-35] 1991 was altered by the Union Stewardess. See [A-76] letter dated May 21, 1991. The June 3, 1991 letter shows the time frame to protest the Petitioner's dismissal was cunningly and maliciously planned to

cause Petitioner's termination was intended to be, and was in fact, without a hearing.

As noted in the question presented the Respondent alleged it terminated Petitioner as an individual, paranoid with fixed delusional disorders, having no insight, a major speech defect and being permanently unfit by social security disability standards to work anywhere [A-58].

This is very unusual employment discrimination case. The Arbitrator states "it is not entirely without doubt that the disability separation procedures were a pretext for what is reality for grievant Petitioner's failure to return to work at a time satisfactory to supervision" [A-12].

This case involves fraud, forgery, false pretense, misrepresentation and collusion with the Union and Management; along wrongful and willful intent to create an "irrebuttable presumption" that Petitioner is totally and permanently incompetent with graphic disabilities, such as [A-7] thinking disorders since age sixteen (16).

The fraud involved in this case is clear and obvious. The misrepresentations and exchange of facts between Respondent and its medical professionals for creating Petitioner's alleged disabilities were known to be untrue. Note the inconsistencies [A 3-4 and 58-60]. The record also shows the fictitious facts intended to concoct the fraudulent disabilities were not only untrue, but absurdly unlikely improbable and impossible.

The prior arbitration decision established a number of the facts and issues involved in this discrimination case. The arbitrator noted in [A-4] the Petitioner's dismissal allegedly did not involve any disciplinary action. Nor did this case involve any infraction of rules or any improper performance of duties [A-7].

The Respondent County emphasized that its action with respect to grievant Petitioner as nondisciplinary [A-10) in nature and that it was solely a disability separation. The Respondent at the time of arbitration emphasized that it separated Petitioner from employment based on disability [A-10].

The United States District Court and the United States Court of Appeals appear to conclude the subject matter of this employment discrimination suit should not be entertained in the Federal courts. It would appear that the court erred in law and in fact when it granted Respondent a summary judgment. The District Court's decision nullified much of the collective bargaining agreement and the Petitioner's right to protect his "career" and reputation from injury; while granting Respondent a summary judgment welcoming false allegations that were legally decided "to have no rationale basis" to become a logical reason for obvious and ongoing discrimination [A-11, 12].

As of May 25, 1995 Respondent continues to file documents long after the District Court's summary judgment alleging Petitioner to be incompetent, causing further damages to Petitioner in the workplace [A 14-17]. The Department of Housing and Urban Development preliminary finding establishes the fact that the Respondent continues to engage in misconduct. "The Supreme Court makes it clear that proof of motivation necessary to establish a disparate treatment claim may be derived from inference based on the employer's conduct". Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

The Respondent has not mooted its allegations and claims that Petitioner is totally incompetent. At issue are a number of fundamental individual rights, liberties, and freedoms of the Petitioner. The federal courts decisions are obviously contributing to the discrimination against the

Petitioner's "right to work" [A-90] and "right to think" [A-7, 58] on equal footing with his peers and co-workers.

The arbitration proceedings lasted four (4) days, May 7, 1991, June 19, 1992, June 25, 1991 pages numbered 1 thru 526; August 3, 1991 pages numbered 1 thru 173, equally six hundred and ninety pages of transcribed materials, plus briefs, exhibits and other.

This grievance against the Respondent was that Petitioner's separation was wrongful in a number of ways and ask the arbitrator to reinstate him whole [A-3]

The unfair and unjust treatment of the Petitioner could not be remedied by the arbitrator. Yet the wrongful discrimination is rather clear in the issues of (1) whether the Respondent had jeopardized Petitioner's health and safety (2) whether Petitioner was permanently mentally dysfunctional/disabled and (3) whether Petitioner dismissal was wrongful were all interwoven at the arbitration hearing. Dangerous action in the environment [A-4] contributed to the arbitrator concluding no reasonable basis to find in favor of the Respondent County {A-12], Respondent's actions were wrongful as noted by grievance [A-3] and the arbitration decision [A-3].

CONCLUSION

The Arbitration proceedings were held on May 7, June 19, June 25, and August 3, 1992. There were six hundred and ninety-nine pages of transcribed materials, plus brief and exhibits.

The circumstances involving petitioners dismissal were fully examined and scrutinized. The Arbitrator found the Petitioner was wrongfully terminated and there was "no rational" [A 3-13] basis for Petitioners termination.

On July 2, 1993, in the Circuit Court for Prince George's County, Maryland and summary judgment confirmed the Arbitration Award. The County's arguments and reasons for opposing the Arbitrators actions are contained in transcribed materials [A 105-121].

On December 9, 1993, a motion to compel with the final and binding Labor Arbitration Award that had been decided against the Respondent on February 18, 1993. Petitioner was reinstated to Respondent employment on December 14, 1993. The Collective Bargaining Agreement of the union to which Petitioner is a member provided a separate legal remedy for acts of wrongful discrimination.

On May 6, 1994, the Respondent withdrew all of its objections and appeals to the Arbitration Award with prejudice [A 145].

On May 9, 1994, Respondent issued a memorandum of settlement [A 141-144]. Item 4 restored all such leave as used by Petitioner between January 28, 1991 through April 21, 1991. That item recognized Petitioners initial written complaint protesting his being forced from the workplace due to violence and criminal misconduct of another [A 44].

On May 26, 1994, the Respondents decided it would not offer an all claims settlement for the damages caused to the Petitioner as a result of his wrongful termination [A 147].

On May 27, 1994, Petitioner notified the United States District Court by letter that the final and binding actions taken regarding the Petitioners actions taken with prejudice to no longer deny compliance with the award.

The action of the United States District Court interferes and destroys the vested rights that the Petitioner received under the terms of the February 18, 1993 Arbitration Award. For example, on [A 25-26] the United States District Court embraces the idea that Petitioner suffered an emotional handicap. The District Court actions clearly adopts the Respondent claim that [A 60] Petitioner was unfit for duty as of January 25, 1991. It in essence nullified the Arbitration Award and canceled the memorandum of settlement for May 9, 1994.

It also provides an opportunity for the Department of Housing and Urban Development to ignore the law requiring that Federally assisted programs not engaged in actions contrary to Federal, State and local anti discriminatory laws. For example, the contents of Housing and Urban Development's May 25, 1995 preliminary findings that Prince George's County in dismissing Petitioner under the circumstances has complied and is complying with all anti discrimination laws pertaining to Federally assisted programs [A 31-40].

The Respondent knowingly distributed false information, depriving Petitioner of legal rights and freedom. The Respondent also stated the medical information was intended to become an irrebuttable presumption of incompetence: which is outrageous fraud.

The Supreme Court has made clear, however, that "the McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination." Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985). Courts have recognized that a plaintiff can prove a claim of intentional discrimination, on the basis of direct evidence, even where the plaintiff cannot establish the qualification (or performance element of the McDonnell Douglas standard.

U. S. 994 (1983); see also Patteson v. McLean Credit Union, 491 U.S. 164, 187-88 (1989) (plaintiff may use any type of evidence to show pretext and may not be forced to use one particular type). Indeed, the entire McDonnell Douglas evidentiary framework is designed to permit plaintiffs to raise an inference of discrimination even in the absence of "express[ions of] any intent or motive to discriminate ... on the basis of age". See Price Waterhouse v. Hopkins, 490 228, 270-71 (1989) (O'Connor, J., concurring.)

Massey v. Trump's Castle Hotel & Casino, 828 F. Supp. 314, 322 (d.N.J. 1993) (holding that "an employee's federal discriminatory discharge claim will not be barred by after acquired evidence of that employee's misconduct" since "an illegal discharge causes an injury regardless of an employee's previous misconduct, and that injury must be subject to some redress").

In Wilmington Trust Co. v. Manufacturer's Life Insurance Co., 624 F.2d 707, 709 (5th Cir 1980) (summary judgment is inappropriate where the defendant bears the burden of proof on the issue and the defendant submits nothing more than subjective affidavit evidence to prove the disputed fact); see generally Price Waterhouse v. Hopkins, 490 US. at 252 (stressing that an employer "should be able to present some objective evidence as to its probable decision" when seeking to prove what it would have done in the absence of discrimination).

In Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978) ("when all legitimate reasons for rejecting an applicant have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts only with some reason, based his decision on an impermissible consideration") (emphasis in original). See also International Bhd. of Teamsters v. United States, 431 U.S. 324, 358 n.44 (1977) ("Elimination of [defendant's] reasons for the refusal to hire is sufficient, absent anY other explanation to create an inference that the decision was discriminatory one").

Court has power to review and set aside labor arbitration award only if grievance is not arbitrable, if decision of arbitrator is arbitrary or capricious, or if arbitrator exceeds his contractual authority, court's function is to ascertain whether party seeking arbitration is making claim which on its face is governed by contract, and court should not weigh merits of grievance. Peter Cooper Corps v. United Electrical, Radio & Machine Workers (ED Wis) 472 F Supp 692.

Finally, the transcribed materials contained herein the Arbitration Award and court transcripts show there is "no logical" not rationale evidence for Respondent to have dismissed Petitioner in the way it did or the manner that it did or for the reasons it claimed.

The harmful effects of such discrimination now continuous as a result of the District Court and The Court of Appeals violating or permitting the Arbitration Award to be literally violated. The overturning of the Award as allows the petitioner to be classified as an employee in a manner that is irreparably harmful. [A 14 - 17] The continuous discrimination is not time barred because it continues both in theory and in fact.

For these foregoing reasons, this Honorable Court is being asked to review this matter de novo and grant this petition.

Respectfully submitted,

Larry G. McFarland
Pro Se Counsel of Record

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PETITIONER'S APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-2135

Larry G. McFarland
Plaintiff - Appellant,

versus

Prince George's Government of
Prince George's County, Maryland,
Defendant - Appellee.

(Entered June 27, 1995)

Appeal from the United States District Court for the District of Maryland, at Baltimore. Peter J. Messitte, District Judge. (CA-93-1872-PJM)

Submitted: June 13, 1995 Decided: June 27, 1995

Before MURNAGHAN and HAMILTON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Larry G. McFarland, Appellant Pro Se. Jay Heyward Creech, Assistant State's Attorney, Upper Marlboro, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant noted this appeal outside the thirty-day appeal period established by Fed. R. App. P. 4(a) (1), failed to obtain an extension of the appeal period within the additional thirty-day period provided by Fed. R. App. P.4 (a) (5), * and is not entitled to relief under Fed. R. App. P. 4(a) (6). The time periods established by Fed. R. 4 are "mandatory and jurisdictional. " *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 264 (1978) (quoting *United States v. Robinson*, 361 U.S. 220, 229 (1960)). Appellant's failure to note a timely appeal or obtain an extension of the appeal period deprives this Court of jurisdiction to consider this case. We therefore grant Appellee's motion to dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

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* We find that the district court did not abuse its discretion by denying Appellant's motion to extend the filing deadline.

BEFORE
SEYMOUR STRONGIN
ARBITRATOR

Entered FEBRUARY 18, 1993

In the Matter of the Arbitration between

PRINCE GEORGE'S COUNTY, MARYLAND

-and-

COUNCIL 67, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO, AND ITS AFFILIATED
LOCALS 2462, 2735 AND 1691

Re: Larry G. McFarland

Larry G. McFarland, the grievant herein, protests the County's action in separating him from County service on April 19, 1991. In this proceeding the Union contends grievant's separation was wrongful in a number of respects and asks the Arbitrator to reinstate him to his position with the County and to make him whole.

The facts that gave rise to the protested County action are largely undisputed and may be briefly summarized. Grievant was first employed by the County on December 4, 1967, in the Department of Housing and Community Development. On July 6, 1975 he was named a Labor Relations Specialist and remained in his position until the date of his disputed separation. As a Labor Relations Specialist, grievant was responsible for insuring that the County complied with federal wage rate laws and other labor standards in

connection with federally funded County housing and community development programs. In the performance of these duties, grievant was largely unsupervised both while working in his office and while dealing with County contractors and others in the field. Although a license to practice law was not required for a Labor Relations Specialist, grievant nevertheless was an attorney and a member of the District of Columbia bar. Throughout the entire course of grievant's employment with the County, his performance was always satisfactory or better. He had never been warned or otherwise disciplined for any infraction of any rule of conduct or for any improper performance of his duties.

Grievant worked in a large room at a desk largely surrounded by partitions described as chest high. Among others, two employees responsible for the County's compliance with federal laws and regulations worked in the same room. These two also worked in cubicles whose partitions were shared with grievant. One was Dianne Thomas and the other was Emerson Gaynor. Gaynor was known to be taking medications for a health problem. When his medication was "in balance" Gaynor's demeanor was entirely normal. When Gaynor's medication was not in balance, his behavior was erratic and fellow employees in the area avoided him. The relationship between Gaynor and grievant was not cordial.

Grievant's separation from County employment grew out of an incident precipitated by Gaynor on January 25, 1991. Shortly after noon on that date, grievant was having a jocular conversation with another employee. It may be, as suggested in the record, (Gaynor did not testify) that Gaynor overhead a comment made by grievant at this time that Gaynor believed was directed at him. But whatever precipitated the stupid and potentially dangerous action, Gaynor threw two objects over the partition separating his cubicle from that of grievant, a ceramic coffee cup and glass

bottle half-filled with a beverage. The ceramic coffee cup struck grievant on his chest. The soda bottle apparently landed harmlessly except that the liquid it contained spilled over some papers. Immediately after being struck with the cup, grievant hurried away from his cubicle to another part of the building with Gaynor shouting at him and pursuing him for a distance. When grievant reached a telephone, he called the police who arrived shortly thereafter.[1]

Upon his return from lunch, Raymond Skinner, director of the Department of Housing and Community Development, was briefed by his secretary on the episode involving Gaynor and grievant. Skinner then called grievant to his office where grievant described the incident. Observing that grievant was considerably agitated, Skinner told grievant to take administrative leave for the remainder of the day. Skinner directed further investigation of the incident by grievant's supervisor, Kenneth Collins, during the week beginning Monday, January 28, 1991. According to Collins, grievant did not return to work during that week and did not make himself available for an interview. Following his investigation, Collins recommended that Gaynor receive a letter of reprimand for his behavior on January 25, a recommendation that Skinner approved.

Grievant did report to the Department on January 28, but it appears, solely for the purpose of seeking approval of a leave request. Grievant was granted sick leave for the period January 28, 1991 through April 30, 1991. According to the record, this request was granted by Collins on a form dated January 25, 1991. On January 28, grievant had a brief discussion with Skinner to whom he expressed his concern about working near Gaynor because, he grievant, was worried about his corneal transplants. On the following day, grievant

[1] A criminal complaint was filed and, ultimately Gaynor entered a plea of guilty to the charge of assault and was placed on probation for a one year period.